

EXECUTIVE OFFICER SUMMARY REPORT
September 8, 2004

ITEM: 14

SUBJECT: Settlement of Potential liability against KB Home Coastal for violations of Order No. R9-2001-0096, NPDES No. CAG919002, Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within San Diego Except for San Diego Bay associated with construction project referred to as Mar Lado Pump Station in Oceanside Calif. in San Diego County. The Regional Board will consider accepting a proposed settlement for the liability in lieu of adopting an ACL. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Resolution No. R9-2004-0264) (*Sabine Knedlik*)

PURPOSE: The Regional Board will decide whether to accept KB Home Coastal Inc.'s (hereinafter KB Home) settlement offer (Document No. 3).

PUBLIC NOTICE: KB Home's settlement offer was publicly noticed in the North County Times on July 10, 2004 and on the Regional Board web page on July 2, 2004. The 30-day public comment period ended on August 4, 2004. No comments have been received on this item.

DISCUSSION: On March 11, 2004, KB Home reported that on January 7, 2004 it discharged extracted groundwater to the San Luis Rey River in violation of Order No. 2001-96's Effluent Limitations for Turbidity (chronic violation), Total Nitrogen Instantaneous Maximum (serious violation), Total Nitrogen Average Monthly (serious violation), and Total Phosphorus Average Monthly (serious violation) (Document No. 4). Based upon the data in KB Home's report, the Executive Officer on April 23, 2004 issued Complaint No. R9-2004-0116, Administrative Assessment of Civil Liability for Mandatory Minimum Penalties (hereinafter Complaint) in the amount of \$12,000 against KB Home for violation of Order No. 2001-96 (Document No. 5). In response to the Complaint, KB Home on May 26, 2004 provided written comments and evidence disputing the technical aspects of the

Complaint allegations, specifically that there was no discharge to the San Luis Rey River on January 7, 2004 (Document No. 6). Furthermore, KB Home offered to settle the Complaint without admission of liability by submitting \$5,000 for the State Water Pollution Cleanup and Abatement Account administered by the California State Water Resources Control Board.

Upon review of the information submitted by KB Home, the Executive Officer agreed with KB Home's statement that no discharge occurred on January 7, 2004 as initially reported by KB Home on March 11, 2004 (Document No. 7). Due to the inaccuracy of KB Home's report, and the number of hours devoted by the Regional Board in preparing the Complaint, the Executive Officer recommends accepting KB Home's settlement offer. On June 24, 2004, the Regional Board received and deposited a \$5,000 check from KB Home into the State Water Pollution Cleanup and Abatement Account.

KEY ISSUES:

1. In lieu of the Regional Board issuing a new ACL complaint for reporting violations, the Regional Board can accept KB Home's offer to settle this matter now.
2. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability.

LEGAL CONCERNS:

None.

**SUPPORTING
DOCUMENTS:**

1. Site Map
2. Tentative Resolution No. R9-2004-0264
3. KB Home Settlement Offer
4. KB Home Laboratory Results
5. Complaint No. R9-2004-0116
6. KB Home Response to Complaint
7. Regional Board Letter, June 9, 2004

RECOMMENDATION(S): Adopt tentative Resolution No. R9-2004-0264.